

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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| In the Matter of the Application of |) | |
| |) | |
| PETER and ANN BOSTED |) | DOCKET NO. 2016-0224 |
| Complainants, |) | |
| |) | |
| vs. |) | |
| |) | |
| HAWAIIAN ELECTRIC COMPANY, INC., and |) | |
| HAWAII ELECTRIC LIGHT COMPANY, INC. |) | |
| Respondents. |) | |
| _____ |) | |

ORDER NO. 39042

PREHEARING ORDER

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| HAWAII ELECTRIC LIGHT COMPANY, INC. |) | |
| Respondents. |) | |
| _____ |) | |

PREHEARING ORDER

As the designated Hearings Officer for Docket No. 2016-0024, I submit this Prehearing Order pursuant to Hawaii Administrative Rules ("HAR") § 16-601-37.

On March 2, 2023, I presided over a virtual (WebEx) prehearing conference, pursuant to HAR § 16-601-36. Attorneys for PETER BOSTED and ANN BOSTED (together "Complainants"); HAWAIIAN ELECTRIC COMPANY, INC. and HAWAII ELECTRIC LIGHT COMPANY, INC. (together "Respondents"); the DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"); and KONA 50-18 LLC, KONA 50-19 LLC, KONA 50-20 LLC, KONA 50-21 LLC, KONA 50-22 LLC, KONA 50-23 LLC, KONA 50-24 LLC, KONA 50-25 LLC, KONA 50-26 LLC, KONA 50-27 LLC, KONA 50-28 LLC, KONA 50-29 LLC, KONA 50-30 LLC, KONA 50-31 LLC, KONA 50-33 LLC, KONA 50-34 LLC, KONA 50-35 LLC,

SOUTH POINT FIT LLC, and HAWAII FIT TWELVE LLC. (together "Intervenors") attended.

I.

SUMMARY OF THE PREHEARING CONFERENCE

A.

Timing

At the prehearing conference, I discussed the timing of the evidentiary hearing, including the possibility of moving the hearing to April 13, 2023. Both the Complainants and the Respondents indicated a tentative willingness to move the hearing to April 13, 2023, pending the availability of witnesses. As discussed below, I granted the Complainants' motion to continue the hearing, and unless I further continue the hearing, it shall take place on April 13, 2023, at 9:00 a.m., via WebEx.

B.

Evidence

I also discussed the possibility of amending the witness and exhibit lists. The Complainants indicated that they would like to add at least one witness. The Respondents and Intervenors objected to adding any witnesses. I explained that the scope of this proceeding has been significantly narrowed from six issues to one. I also reviewed the existing witness and exhibit lists,

which are over five years old. The Respondents informed me that one of their original witnesses has retired and, therefore, they would need to find a new witness to adopt their original witness' testimony. Based on the narrowing of the scope of this proceeding, the age of the existing witness and exhibit lists, and because up until very recently the Complainants have been proceeding pro se, I determined that the fair and efficient conduct of this proceeding would be advanced by allowing all parties to amend their witness and exhibit lists. Therefore, I overruled the Respondents' and the Intervenors' objections.

After confirming that each party could comply with the deadline, I instructed the parties to file their updated witness and exhibit lists by March 16, 2023. The Complainants indicated that although they will strive to file written testimony of any new witnesses by the same date, they could need up to an additional two weeks. I directed Complainants to either: (1) file any new written testimony by March 16, 2023; or (2) move for additional time to file written testimony, not to exceed two weeks, by March 16, 2023. The Complainants agreed to this. I directed the parties to exchange electronic copies of any new written testimony, exhibits, and amended witness and exhibit lists via email by March 16, 2023.

I stated that I would consider continuing the hearing beyond April 13, 2023, if the Complainants file written testimony after March 16, 2023. I told the parties that I would review motions related to any new written testimony after it is filed. I stated my goal to allow each party a fair opportunity to present evidence and be heard, and an opportunity to review all witness testimony and exhibits well before the hearing, to prevent a "trial by ambush." Finally, I encouraged the parties to jointly file stipulated facts to allow the hearing to focus on issues that are in dispute.

C.

Hearing and Post-Hearing Procedures

I told the parties my goal to complete the evidentiary hearing in one day. The parties agreed that a one-day hearing is feasible. I explained that the Complainant bears the burden of proof to establish the alleged violation by the preponderance of the evidence standard. The Complainants argued that this evidentiary standard may be incorrect. I allowed the Complainants to file a brief regarding the appropriate evidentiary standard no later than two weeks before the hearing and the Respondents and

Intervenors to file a rebuttal to that brief no later than one week before the hearing.

I also discussed the order of testimony, cross-examination, limited re-direct examination, limited re-cross-examination, and the possibility that I may pose questions to witnesses. Respondents stated their procedural preference that direct examination be limited to a witness adopting their pre-filed testimony to allow more time for cross-examination and to support the goal of completing the hearing in one day. No party opposed to Respondents' suggestion.

The parties requested the opportunity to file post-hearing briefs. The Respondents indicated that this would allow me to reduce the time spent at the hearing on closing arguments. The parties agreed that these briefs should be filed two weeks after the transcript is available and that the briefs shall be limited to 20 pages. I told the parties that I would, at a minimum, allow for brief closing arguments at the hearing, and possibly longer arguments if time permits. I offered the Parties multiple opportunities to ask questions about the hearing. I cautioned the parties that failure to attend the hearing could result in default.

D.

Hearing Transcripts

I informed the parties that the Hearing would be recorded and later transcribed by a court reporter. Complainants moved for the hearing to also be either live-streamed or that the recording later be posted to the Commission's YouTube channel. No party objected. The Respondents requested that I have the court reporter attend the hearing and transcribe it live so that the transcript would be available sooner than it would be if I provided the court reporter with a recording of the hearing after its conclusion. I informed the parties that would confer with the Commission's Chief Clerk to determine if this would be possible. The Complainants also indicated that they would move to be provided a free copy of the transcript.

II.

GRANTING COMPLAINANTS' MOTION TO CONTINUE THE HEARING

A.

Background

On February 17, 2023, Complainants filed a Notice of appearance of counsel.¹

Also on February 17, 2023, Complainants filed a Motion to continue the hearing in this matter, which is currently scheduled for March 9, 2023.²

The Motion requests that the hearing be held on or after April 10, 2023, to allow sufficient time for Complainants' newly retained attorneys to fully review the record and prepare for the hearing.³ The Motion also states that the Complainants' new attorneys will need to "amend appropriate exhibit and witness lists[.]"⁴

¹See "Notice of Appearance of Counsel for Complainants Peter Bosted and Ann Bosted; and Certificate of Service," filed on February 17, 2023 ("Notice").

²See "Complainants' Motion to Continue the Hearing Currently Scheduled for March 9, 2023; and Certificate of Service," filed on February 17, 2023 ("Motion").

³See Motion at 1.

⁴Motion at 1.

On February 24, 2023, the Intervenor^s filed their response to the Motion.⁵ Although the Intervenor^s question whether the requested continuance is necessary, the Intervenor^s do not explicitly oppose a continuance of the hearing.⁶ The Intervenor^s focus on arguments that the Complainant^s: (1) not be allowed to expand the scope of the remaining issue in this proceeding, or to re-open issues that have already been resolved; and (2) not be allowed to bring in surprise witnesses and exhibits.⁷

Also on February 24, 2023, Respondent^s filed their response to the Motion.⁸ Respondent^s state that they have no opposition to a brief continuance of the hearing, so long as it is no longer than the minimum 30 days requested by the Complainant^s.⁹

⁵See "Intervenor^s Kona 50-18 LLC, et al., South Point Fit LLC, and Hawaii Fit Twelve LLC's Response to Complainant^s Motion to Continue the Hearing Currently Scheduled for March 9, 2023; and Certificate of Service," filed on February 24, 2023 ("Intervenor^s Response").

⁶See Intervenor^s Response at 2, 4, 7.

⁷See Intervenor^s Response at 6-7.

⁸See "Respondent^s Hawaiian Electric Company, Inc. and Hawaii Electric Light Company, Inc.'s Statement of Position as to Complainant^s Motion to Continue the Hearing Currently Scheduled for March 9, 2023; and Certificate of Service," filed on February 24, 2023 ("Respondent^s Response").

⁹See Respondent^s Response at 1.

On February 27, 2023, the Consumer Advocate filed its response to the Motion.¹⁰ The Consumer Advocate does not oppose the Motion.¹¹

B.

Ruling

The purpose of the hearing is to develop a sound record for decision-making. Allowing the Complainants' new attorneys sufficient time to prepare for the hearing will promote an efficient hearing and the development of a sound record. Further, no party will be significantly prejudiced by a brief hearing delay. For these reasons, I grant Complainants' Motion to continue the hearing. Although Respondents request that the hearing be held no later than April 10, 2023, to better coordinate with other Commission resources, I intend to hold the hearing at 9:00 AM on April 13, 2023, via WebEx. As discussed above, I may further continue the hearing to allow the Complainants to file written

¹⁰See "Division of Consumer Advocacy's Response to Complainant's Motion to Continue the Hearing Currently Scheduled for March 9, 2023; and Certificate of Service," filed on February 27, 2023 ("Consumer Advocate's Response").

¹¹See Consumer Advocate's Response at 1-2.

testimony, and to allow the Respondents and Intervenor to review that testimony.

III.

HEARING LINK AND DATE

Unless I receive and grant another motion to continue, the hearing shall take place on April 13, 2023, at 9:00 a.m. via WebEx. The hearing will be recorded for the purposes of transcription by a court reporter. That transcript will become a part of the record in this case. The hearing will also be live-streamed and/or later be posted to the Commission's YouTube channel. Parties or their counsel shall attend the hearing online or via telephone as follows.

Online (via web browser or WebEx mobile device app)

<https://hpuc.my.webex.com/hpuc.my/j.php?MTID=m7c5e786ce90348e816b92932184b55d8>

Meeting Number: **2558 822 0717**

Meeting Password: **0224**

Telephone

Dial-in Number: **1-650-479-3208**

Access code: **2558 822 0717**

IV.

ORDERS

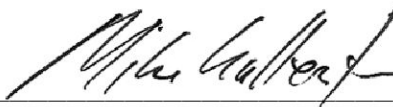
1. The Complainants' Motion is granted. Unless I further continue the hearing, it shall take place on April 13, 2023, at 9:00 a.m., via WebEx.

2. Each party shall file updated witness and exhibit lists, and any new direct testimony by 5:00 PM on March 16, 2023.

3. Post-hearing briefs shall be filed no later than two weeks after the hearing transcript is available. Post-hearing briefs shall be no longer than 20 pages and comply with HAR § 16-601-16.

DONE at Honolulu, Hawaii MARCH 7, 2023.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Mike S. Wallerstein, Hearings Officer

2016-0224.ljk

CERTIFICATE OF SERVICE

The foregoing Order was served on the date was uploaded to the Public Utilities Commission's Document Management System and served through the Document Management System's electronic Distribution List.

FILED

2023 Mar 07 PM 16:05

PUBLIC UTILITIES
COMMISSION

The foregoing document was electronically filed with the State of Hawaii Public Utilities Commission's Document Management System (DMS).